

# EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

**CERTIFIED COPY**

IN RE ABBOTT LABORATORIES )  
NORVIR ANTITRUST LITIGATION) )  
LITIGATION, )

C-04-1511 CW

TUESDAY, DECEMBER 11, 2007

SAFEWAY, )  
PLAINTIFF, )

OAKLAND, CALIFORNIA

VS. )

ABBOTT LABORATORIES, )  
DEFENDANT. )

C-07-5470 CW

SMITHKLINE BEECHMAN, )  
PLAINTIFF, )

VS. )

C-07-5702 CW

ABBOTT LABORATORIES, )  
DEFENDANT. )

MEIJER, INCORPORATED, )  
PLAINTIFF, )

VS. )

C-07-5985 CW

ABBOTT LABORATORIES, )  
DEFENDANT. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(CAPTION AND APPEARANCES CONTINUED ON NEXT PAGE)

REPORTED BY: DIANE E. SKILLMAN, CSR #4909, RPR, FCRR  
OFFICIAL COURT REPORTER

ROCHESTER DRUG,	)	
CO-OPERATIVE,	)	
	)	
PLAINTIFF,	)	
VS.	)	C-07-6010 CW
	)	
ABBOTT LABORATORIES,	)	
	)	
DEFENDANT.	)	
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	)	
RITE-AID CORPORATION,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	C-07-6120 CW
	)	
ABBOTT LABORATORIES,	)	
	)	
DEFENDANT.	)	
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	)	
LOUISIANA WHOLESALE	)	
DRUG COMPANY,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	C-07-6118 CW
	)	
ABBOTT LABORATORIES,	)	
	)	
DEFENDANT.	)	
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**APPEARANCES:**

FOR DOE & SEIU  
PLAINTIFFS:

BERMAN, DEVALERIO, PEASE,  
TABACCO, BURT & PUCILLO  
425 CALIFORNIA STREET, STE. 2025  
SAN FRANCISCO, CALIFORNIA 94104  
BY: JOSEPH J. TABACCO, ESQUIRE  
JAMES C. MAGID, ESQUIRE

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LABATON SUCHAROW  
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LAW OFFICE OF RICHARD R. WIEBE  
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BY: RICHARD R. WIEBE, ESQUIRE

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ASSISTANT GENERAL COUNSEL

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MEIJER: KAPLAN FOX  
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BY: LINDA N. NUSSBAUM, ESQUIRE

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2 CO-OPERATIVE, INC.:

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SAN FRANCISCO, CA 94111

3 BY: JOSEPH R. SAVERI, ESQUIRE

4 BERGER & MONTAGUE  
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6 PHILADELPHIA, PENNSYLVANIA 19103

7 BY: ERIC L. CRAMER, ESQUIRE

8 FOR PLAINTIFF  
9 RITE-AID:

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10 BY: MONICA L. REBUCK, ESQUIRE

11 FOR PLAINTIFF  
12 LOUISIANA  
13 WHOLESALE DRUG:

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14 BY: WAYNE M. LIAO, ESQUIRE

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18 BY: NOAH H. SILVERMAN, ESQUIRE

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22 BY: ANDREW E. AUBERTINE, ESQUIRE

23 FOR SAFEWAY  
24 AND RITE-AID:  
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BY: WILLIAM F. MURPHY, ESQUIRE  
BARBARA HARRIS-CHIANG, ESQUIRE

FOR DEFENDANT  
ABBOTT LABORATORY:

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101 CALIFORNIA STREET  
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BY: JAMES F. HURST, ESQUIRE  
NICOLE M. NORRIS, ESQUIRE

1 CATEGORY.

2 **THE COURT:** YOU ARE NOT TRYING TO BE A CLASS OF  
3 ANYBODY?

4 **MR. WILES:** CORRECT. I COULD GIVE IT SOME THOUGHT,  
5 BUT --

6 **THE COURT:** CAN'T FIND ANYONE TO BE IN A CLASS WITH?  
7 IS THAT EVERYBODY?

8 **MS. SALZMAN:** YES, YOUR HONOR.

9 **THE COURT:** WHAT ALL DO YOU KNOW ABOUT WHETHER  
10 ANYBODY ELSE IS GOING TO BE COMING FORWARD?

11 WE ALREADY HAVE -- DID WE GET THE TWO NEWEST ONES TO  
12 COME IN?

13 **THE CLERK:** YES.

14 **THE COURT:** SO EVERYONE WE HAVE SO FAR IS HERE.

15 WHAT DO YOU ALL KNOW THROUGH THE GRAPEVINE OR ANY  
16 OTHER SOURCE AS TO HOW MANY MORE OF THESE CASES ARE COMING DOWN  
17 THE PIKE IF ANY?

18 **MR. PERWIN:** WE DON'T EXPECT ANY MORE, YOUR HONOR.

19 **MS. SALZMAN:** I CONCUR WITH THAT.

20 **THE COURT:** BUT YOU DON'T KNOW. ANYBODY COULD COME  
21 FORWARD AT ANY MOMENT THAT HASN'T BEEN IN TOUCH WITH YOU. SO  
22 YOU ARE SAYING NO ONE HAS BEEN IN TOUCH WITH YOU AT LEAST.

23 WHAT ABOUT YOU, DO YOU KNOW ABOUT ANYBODY?

24 **MR. HURST:** NO, WE DON'T EXPECT ANYBODY BECAUSE THE  
25 FOUR-YEAR STATUTE OF LIMITATIONS IN THE SHERMAN ACT WOULD HAVE

1 EXPIRED ON DECEMBER 4TH.

2 **THE COURT:** OH, THAT'S WHY EVERYBODY --

3 **MR. HURST:** THAT'S WHY EVERYONE IS RUSHING IN.

4 **THE COURT:** CAME IN AT THAT MOMENT. I WONDERED.

5 **MR. HURST:** THAT'S RIGHT.

6 **THE COURT:** DIDN'T HAVE ANYTHING TO DO WITH THE  
7 CASCADE HEALTH CASE.

8 **MR. HURST:** I DON'T IMAGINE THAT PROMPTED ANYBODY TO  
9 FILE A LAWSUIT, YOUR HONOR.

10 **THE COURT:** THAT CAME BEFORE THE STATUTE STARTED TO  
11 RUN.

12 **MR. HURST:** THAT CAME DOWN IN SEPTEMBER.

13 **THE COURT:** OKAY.

14 I DON'T KNOW WHAT TO DO WITH YOU ALL. I DON'T WANT  
15 TO TRY ANYTHING TWICE THAT I DON'T HAVE TO, BUT ON THE OTHER  
16 HAND I DON'T WANT TO PENALIZE PEOPLE WHO HAVE BEEN STRUGGLING  
17 ALONG FOR YEARS AND THEN DELAY THEM WHILE WAITING FOR OTHER  
18 PEOPLE.

19 SO I AM OPEN TO SUGGESTIONS AS TO HOW WE COULD MOST  
20 EFFICIENTLY DEAL WITH THIS WITHOUT DOING ANY TRIALS TWICE  
21 CONSIDERING ISSUES OF COLLATERAL ESTOPPEL, RES JUDICATA,  
22 BIFURCATION, TRYING CERTAIN THINGS, BUT NOT OTHERS. THERE'S AN  
23 INHERENT PROBLEM WITH THE DIRECTS VERSUS THE INDIRECTS ANYWAY I  
24 SUPPOSE, BUT ONLY AS TO DAMAGES NOT AS TO LIABILITY.

25 SO LET ME START WITH THE DOE PEOPLE. IF YOU CAN

1 TELL ME WHAT IDEAS YOU MIGHT HAVE TO AVOID ME HAVING TO TRY  
2 THIS TWICE.

3 **MR. TABACCO:** BY WAY OF BACKGROUND, YOUR HONOR, AS  
4 YOU KNOW, THIS CASE BEGAN IN '04, AND OUR FIRM HAS BEEN  
5 REPRESENTING THE END USERS AND MS. SALZMAN'S FIRM HAS BEEN  
6 REPRESENTING THE THIRD PARTY PAYERS. YOUR HONOR HAS CERTIFIED  
7 THE CASE TO PROCEED AS A CLASS ACTION. IN FACT, WE HAVE A  
8 MOTION FOR APPROVAL OF THE NOTICE PLAN ON THE CALENDAR, I  
9 BELIEVE, IN A FEW WEEKS.

10 **MS. SALZMAN:** THAT'S SET FOR JANUARY 10TH, YOUR  
11 HONOR.

12 **THE COURT:** IS THAT DISPUTED?

13 **MR. HURST:** WE ARE STILL EVALUATING, YOUR HONOR. I  
14 THINK WE'RE SUPPOSED TO RESPOND ON DECEMBER 20TH.

15 **THE COURT:** OKAY. I WOULDN'T THINK THAT WOULD BE  
16 DISPUTED IN A BIG WAY. IF IT WAS, I WOULD THINK YOU CAN WORK  
17 SOMETHING OUT. IF YOU COULDN'T, I WOULD PROBABLY DECIDE IT ON  
18 THE PAPERS.

19 **MS. SALZMAN:** YOUR HONOR, WE HAD GIVEN THE  
20 DEFENDANTS THE NOTICE PAPERS BUT AT THE TIME THE EXPERT  
21 DISCOVERY WAS UNDERWAY AND I THINK THEY WERE UNABLE TO REALLY  
22 TAKE A CLOSE LOOK, SO AS YOU CAN SEE IN OUR MOTION PAPERS, IT  
23 SAYS THAT THEY JUST RESERVE THE RIGHT TO FURTHER COMMENT.

24 WE HAVEN'T DISCUSSED IT, SO THERE MAY BE NO PROBLEM.

25 **MR. HURST:** THERE IS A REASONABLE CHANCE WE WON'T



1           **THE COURT:** YES.

2           **MR. PERWIN:** AND I RESPECTFULLY DISAGREE, YOUR  
3 HONOR. I THINK THE SCHEDULE --

4           **THE COURT:** ALL RIGHT. WHAT ABOUT YOU?

5           **MS. REBUCK:** MONICA REBUCK ON BEHALF OF THE RITE-AID  
6 PLAINTIFFS.

7           WE AGREE WITH MR. PERWIN THAT WE SHOULD BE GIVEN AN  
8 OPPORTUNITY --

9           **THE COURT:** WHICH ONE IS PERWIN NOW?

10          **MS. REBUCK:** THE SAFEWAY PLAINTIFFS.

11          THAT WE SHOULD BE GIVEN AN OPPORTUNITY TO GET  
12 OURSELVES IN THE POSITION TO TRY IT IN JUNE.

13          **THE COURT:** OKAY. WHAT ABOUT YOU?

14          **MR. WILES:** YOUR HONOR, IN RESPONSE TO YOUR REQUEST,  
15 WHAT WE DID FOR GSK WAS TRY TO SEE IF WE COULD COME UP WITH A  
16 SCHEDULE THAT WOULD MAKE IT FEASIBLE FOR US TO GO TO TRIAL WITH  
17 THE DOE PLAINTIFFS.

18          IT WOULD REQUIRE A DELAY, IN OUR VIEW, OF THREE OR  
19 FOUR MONTHS, I THINK IT'S FOUR MONTHS TO THE 20TH OF OCTOBER.

20          WE ARE PREPARED TO ALLOW THEM TO GO FIRST IF THAT'S  
21 WHAT YOUR HONOR DECIDES. IF YOUR HONOR FEELS AS WAS OUR  
22 IMPRESSION FROM THE ORDERS THAT WE GOT THAT YOU REALLY ONLY  
23 WANT TO TRY THIS ONCE, WE COULD LIVE WITH A TRIAL DATE IN THE  
24 MIDDLE OF OCTOBER, WHICH IS ONLY A MODEST DELAY.

25          **THE COURT:** WELL, I THINK WHAT I'LL DO IS TRY THE

1 INDIRECTS IN JUNE AND TRY THE DIRECTS AT SOME LATER DATE, BOTH  
2 CLASS AND OPT-OUTS. AND THEN THE QUESTION IS WHERE -- DO YOU  
3 FIT BEST IN JUNE WITH THE INDIRECTS, SOMETIME LATER WITH THE  
4 DIRECTS, OR AS A VERY UNDESIRABLE CLEAR CHOICE SEPARATELY?

5 **MR. WILES:** I WOULD SAY -- BOTH WE AND ABBOTT AT  
6 LEAST AGREE ON ONE THING, AND THAT IS THAT JUNE WOULD NOT BE  
7 APPROPRIATE FOR TRIAL OF OUR DISPUTE WITH ABBOTT.

8 **THE COURT:** THAT WOULD MEAN THAT YOU WOULD HAVE TO  
9 GO WITH THE DIRECTS.

10 **MR. WILES:** SO LOGICALLY EITHER WE WOULD GO WITH THE  
11 DIRECTS OR CONCEIVABLY ON OUR OWN, BUT I THINK LOGICALLY WE  
12 WOULD GO WITH THE DIRECTS.

13 **THE COURT:** IS THERE ANY BIG OBSTACLES WITH YOU  
14 GOING WITH THE DIRECTS? ANY SORT OF SUBSTANTIVE OBSTACLE?

15 **MR. WILES:** NOT THAT I CAN THINK OF.

16 **THE COURT:** DO ANY OF THE DIRECTS SEE ANY  
17 SUBSTANTIVE OBSTACLE?

18 **MR. SAVERI:** NOT AS I STAND HERE TODAY. WE'VE GOT,  
19 OF COURSE, SOME ISSUES THAT HAVE TO DO WITH SORTING THROUGH THE  
20 PLEADINGS AND PERHAPS SOME MOTIONS, BUT NOW BASED ON WHAT I  
21 KNOW, I THINK THE CASES COULD GO FORWARD TOGETHER.

22 **THE COURT:** ANYONE DISAGREE?

23 **MR. PERWIN:** JUDGE, JUST SLIGHTLY. THERE ARE  
24 OBVIOUSLY DIFFERENT DAMAGE THEORIES; THAT'S A LOSS PROFITS  
25 THEORY, WE HAVE OVERCHARGE THEORIES. IT CAN BE CONFUSING TO

1 THE JURY, AND I JUST WANT TO RESERVE THE POSSIBILITY OF ASKING  
2 FOR SEPARATE DAMAGE TRIALS. I DON'T THINK THERE'S ANYTHING  
3 ABOUT THE LIABILITY CASE THAT COULDN'T BE TRIED TOGETHER.

4 **MR. SAVERI:** I AGREE WITH THAT, YOUR HONOR.

5 **THE COURT:** IS THAT ALL RIGHT WITH YOU? WE TRY THE  
6 COMPETITORS WITH THE DIRECTS?

7 **MR. HURST:** THERE'S NOTHING THAT OCCURS TO ME AS AN  
8 OBSTACLE TO THAT RIGHT NOW. THE DATE -- I WILL WANT TO TALK  
9 ABOUT THAT LATER -- THE DATE WOULD HAVE TO BE FAIRLY EXTENDED  
10 BECAUSE THE CASE WITH GSK IS ENTIRELY DIFFERENT BECAUSE IT HAS  
11 NEW CAUSES OF ACTION, BREACH OF LICENSE -- BREACH OF THE  
12 LICENSE AGREEMENT, NORTH CAROLINA ANTITRUST LAW.

13 **THE COURT:** OKAY.

14 THE ONLY OTHER OBSTACLES -- YOU KNOW, THIS JUNE  
15 TRIAL DATE ALSO DEPENDS ON THE MOTIONS THAT WE ARE HEARING IN  
16 LATE MARCH. THOSE INCLUDE BOTH ANTITRUST MOTIONS AND PATENT  
17 MOTIONS AND CLAIM CONSTRUCTION, AND IT GIVES ME ONLY THREE  
18 MONTHS BETWEEN THEN AND THE START OF TRIAL. THAT I JUST CAN'T  
19 SWEAR I WILL BE ABLE TO GET IT DONE IN TIME IF IT'S DIFFICULT,  
20 PARTICULARLY IN TIME FOR YOU TO DO ALL YOUR PRETRIAL WORK AND  
21 ALL THAT.

22 SO, WHILE I WILL TRY TO TRY IT IN JUNE, IF YOU  
23 MAKE -- IF THEY MAKE REALLY COMPLICATED MOTIONS, I MAY NOT BE  
24 ABLE TO.

25 **MR. TABACCO:** WE UNDERSTAND.

1           **THE COURT:** I DON'T HAVE ANY COMPETING TRIALS UNLESS  
2 A CRIMINAL CASE SHOULD COME ALONG, BUT I HAVE BEEN -- IT HAS  
3 BEEN KNOWN TO TAKE THAT LONG TO DECIDE DIFFICULT PATENT  
4 MOTIONS.

5           YOU'RE JUNE 30TH. THERE IS NOTHING REALLY  
6 DOUBLESET. I HAVE YOU DOWN FOR EIGHT DAYS.

7           **MR. HURST:** I THINK --

8           **THE COURT:** I CAN'T REALLY GIVE YOU ANY MORE THAN  
9 THAT.

10          **MR. TABACCO:** THAT'S FINE.

11          **MR. HURST:** I GUESS I WOULD ANTICIPATE THE TRIAL  
12 WILL END UP BEING, AS WE'RE SEEING THINGS SHAPE UP, YOUR HONOR,  
13 POTENTIALLY IF IT WENT FORWARD ON ALL OF THE ISSUES, INCLUDING  
14 THE THREE PATENTS, IT WILL TAKE LONGER THAN EIGHT DAYS.

15          **THE COURT:** DIVIDE THE TIME BY TWO. EIGHT DAYS IS  
16 WHAT I HAVE HAD IT FOR ALL ALONG. I HAVE SOMETHING RIGHT AFTER  
17 IT THAT I CAN'T CHANGE.

18          OKAY. SO THAT'S THAT.

19          SO WE DON'T NEED TO DO ANYTHING WITH DOE'S BECAUSE  
20 YOU HAVE ALL YOUR DATES.

21          **MS. SALZMAN:** GREAT. THANK YOU.

22          **THE COURT:** WHAT WE THEN NEED TO DO IS COME UP WITH  
23 DATES FOR EVERYBODY ELSE. AND I WILL LOOK AT THESE CASE  
24 MANAGEMENT SCHEDULES.

25          **MR. TABACCO:** WE WILL GET OUT OF THE WAY, YOUR

CERTIFICATE OF REPORTER

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN IN RE ABBOTT LABORATORIES NORVIR ANTITRUST LITIGATION, C-04-1511 CW, SAFEWAY V. ABBOTT LABORATORIES, C-07-5470 CW, SMITHKLINE BEECHMAN V. ABBOTT LABORATORIES, C-07-5702 CW, MEIJER V. ABBOTT LABORATORIES, C-07-5985 CW, ROCHESTER DRUG CO-OPERATIVE V. ABBOTT LABORATORIES C-07-6010 CW, RITE-AID V. ABBOTT LABORATORIES, C-07-6120 CW, LOUISIANA WHOLESALE DRUG COMPANY V. ABBOTT LABORATORIES, C-07-6118 CW, PAGES NUMBERED 1 THROUGH 59, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE INTEGRITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON REMOVAL FROM THE COURT FILE.



DIANE E. SKILLMAN, CSR 4909, RPR, FCRR